



Public Utility Commission of Texas

1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
512 / 936-7000 • (Fax) 936-7003
Web Site: www.puc.state.tx.us

Pat Wood, III
Chairman

Judy Walsh
Commissioner

Patricia A. Curran
Commissioner

DOCKET NO. 98-167

September 23, 1998

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SEP 25 1998
FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: GTE System Telephone Companies GSTC Tariff No. 1 GSTC Transmittal No. 260
Order Designating Issues for Investigation. CC Docket No. 98-167

Dear Secretary:

Enclosed herewith for filing with the Commission are an original and six copies of the Comments of the Public Utility Commission of Texas in the above captioned matter.

Thank you for your assistance.

Sincerely,

Stephen J. Davis

Stephen J. Davis
Chief
Office of Policy Development

cc: Competitive Pricing Division
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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
GTE System Telephone Companies)
GSTC Tariff No. 1)
GSTC Transmittal No. 260)
Order Designating Issues for Investigation)

CC Docket No. 98-167

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**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

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On September 11, 1998, the Common Carrier Bureau of the Federal Communications Commission (FCC or Commission) released an Order Designating Issues for Investigation in the matter of whether GTE's tariff filing for a new Digital Subscriber Line (DSL) service offering constitutes an interstate access service. We understand that GTE's filed Transmittal No. 260 advances large policy implications for states, the Commission, and telecommunications providers.

In its Order, the Common Carrier Bureau has narrowly set the scope of issues for which responses are being solicited. Having found that the record in this proceeding is incomplete, the Bureau seeks response on: 1) whether GTE's DSL offering is jurisdictionally interstate; 2) whether the service should be tarified at the state or federal level; and 3) whether the Commission should defer to the states the tariffing of retail DSL services. The Order does not seek comment on the interconnection (section 251 and 252) implications of GTE's filing.

I. Recommendation

Our understanding is that GTE's tariff for Asymmetrical DSL (ADSL) service will be used predominantly by Internet Service Providers (ISPs), who will in turn provide high-speed Internet traffic to their customers. The PUCT disagrees with GTE's basic premise that simply

because a telecommunications service is used for Internet provision it should be tariffed on an interstate basis. As elaborated in the next sections of this response, there is existing policy regarding high-speed telecommunications services and switched access to ISPs. Before we can make a determination about whether GTE's DSL service is interstate in nature, we need to know more about how existing advanced and high-speed telecommunications service policies will be affected by the Commission's final determination in this proceeding.

We note that the Commission, as well as the states, are currently investigating the issue of advanced service provision in CC Docket Nos. 98-146 and 98-188, relating to section 706 of the Telecommunications Act of 1996. The PUCT recommends that the Commission reject GTE's tariff filing and instead address the nature of non-switched, high-speed data traffic in the above-referenced proceeding. This will provide the Commission and states the opportunity to explore the issues of GTE's proposed DSL service in the broader context of advanced telecommunications service and availability. In the alternative, the FCC could open a new docket to consider the full range of policy issues regarding ISPs.

II. Existing Methods for Provision of Telecommunications Service

A. *Non-Switched, Dedicated Circuits*

As we understand it, the DSL service proposed by GTE appears to closely parallel the configuration of other non-switched, dedicated circuits currently available to customers. If customers want a non-switched high-speed data connection today, they can order a private line circuit (intraLATA), a state special access line (interLATA), or an interstate special access line. The type of circuit ordered is determined by the end points of the circuit. If a customer bridges

two or more private lines or special access lines together to form a larger, more complex network, that does not change the nature of the circuit purchased from the carrier. As an example, a commercial radio station may use a wideband private line circuit to connect their studio to a remote transmitter in the same town. That circuit does not become interstate simply because that station is broadcasting a sporting event that originates in another state. It would appear most logical to treat DSL in a manner similar to the way in which those circuits are treated today.

B. Switched Access to ISPs

As noted in the Commission's order, GTE's Transmittal No. 260 raises the question of whether DSL service constitutes local exchange access and is therefore exempt from reciprocal compensation with Internet service providers (ISPs). Although it has been decided in 21 states, including Texas, that ISP traffic terminating to a competitive local exchange carrier (CLEC) is local traffic, thus requiring reciprocal compensation of CLECs by ILECs, the issue of reciprocal compensation is not free of controversy. We are concerned about the effect of the decision in this case on the larger policy question about the nature of ISP traffic. Thus far, policy decisions regarding reciprocal compensation have been handled at the state level. Those issues should remain in that local arena. We note that the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution during the summer of 1998 asserting that reciprocal compensation arrangements, including those for ISPs, are subject to state jurisdiction. The NARUC resolution requested that the FCC not intervene in this matter, and requested that

the FCC work with state commissions in order to determine what traffic should be treated as interstate, intrastate, or jurisdictionally mixed.¹

The PUCT conducted a proceeding earlier this year involving a complaint by Time Warner against Southwestern Bell Telephone Company. Within its Order, the PUCT included the following rationale:

“The [PUCT] agrees with the FCC’s view that the provision of Internet service via the traditional telecommunications network involves multiple components.² One component is the information service -- the content -- which appears to consist of a significant amount of non-local traffic. The network component, however, is the carrier-to-carrier and carrier-to-end-user telecommunications transmission component, which in the case of a call between two end users in the same local calling area is local traffic.”

The PUCT also notes that the United States District Court in the Midland Division of the Western District of Texas upheld the PUCT’s determination that ISP traffic is jurisdictionally intrastate.

¹ Resolution on Reciprocal Compensation for Calls to ISPs, 1998 Summer meeting of the Executive Committee of NARUC in Seattle, Washington.

² “We agree with the Joint Board’s determination that Internet access consists of more than one component. Specifically, we recognize that Internet Access includes a transmission component, which is the connection over a LEC network from a subscriber to an Internet Service Provider, in addition to the underlying information service.’ Although the FCC has recognized that this position should be reviewed in a future FCC proceeding, its conclusion in the Universal Service Order is the prevailing FCC decision at this time. Federal Communications Commission, *Report and Order on Universal Service*, CC Docket No. 96-45, FCC 97-157, May 8, 1997, para 83.”

III. Areas of Concern Regarding a Potential FCC Decision in This Matter

We offer two areas of concern regarding a Commission decision on this tariff. First, we point out that a decision regarding GTE's DSL service should not be used to establish Commission precedent with respect to ISP service in general since GTE's service is not offered to end users. Because GTE's service will be sold predominantly to ISPs, and not to the ISPs' end users, the PUCT urges that this docket not be used to determine broad-based advanced service policy. Second, we recommend that the decision in this proceeding should not be used to establish Commission precedent regarding switched access, since GTE's DSL service is a non-switched service. We further note that any decision that questions the application of local reciprocal compensation for the termination of ISP traffic could harm the development of local competition, a key goal of the FTA. Specifically, if competitive LECs are not able to receive compensation for the costs they incur when terminating such calls, a substantial barrier to entry would develop. Competitive LECs would have a disincentive to enter local exchange markets and increased difficulty obtaining financing. Although incumbent LECs could argue that the same disincentive would affect them, the PUCT notes that by nature of their incumbency, incumbent LECs would not be harmed to the same degree as their competitors. Moreover, to the extent that new entry is chilled, incumbents benefit by maintaining other advantages flowing from their market power.

IV. Conclusion

The PUCT appreciates the opportunity to offer a response to the issues brought forth by GTE's Transmittal No. 260. We recognize that the nature of DSL and Internet traffic raises a

multitude of issues, and we are concerned that there is not enough information available to make an ultimate determination in this proceeding about the nature of DSL service. We urge the Commission to reject GTE's tariff filing for DSL service and to instead consider the broader policy issues of the nature of advanced telecommunications traffic in the current investigation into section 706 of the Telecommunications Act of 1996

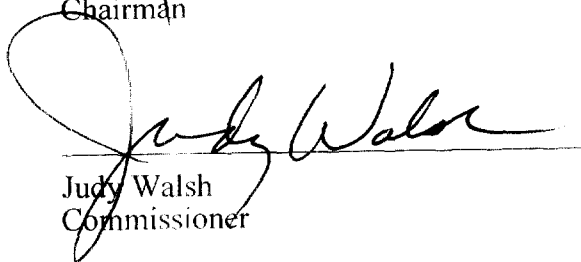
Respectfully submitted,

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Chairman



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Commissioner